

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BARRY HARRIS,

Petitioner,

v.

CALVIN JOHNSON, *et al.*,

Respondents.

Case No. 3:20-cv-00695-MMD-WGC

ORDER

In this habeas corpus action, on December 15, 2020, the Court appointed counsel for Petitioner Barry Harris. (ECF No. 3.) Counsel—the Federal Public Defender for the District of Nevada—appeared for Harris on January 14, 2021. (ECF Nos. 8, 9.) The Respondents have also appeared. (ECF No. 6.) Therefore, the Court will set a schedule for further proceedings in this action.

When Harris initiated this action, he did not pay the filing fee. In the December 15, 2020 order, the Court stated that it would not require Harris to pay the filing fee, or file an *in forma pauperis* application, until after counsel appeared for him. (ECF No. 3 at 1.) On January 6, 2021, Harris, acting *pro se*, filed an application to proceed *in forma pauperis* (ECF No. 7.) That application is incomplete, in that it does not include the required certificate of a prison official showing the amount of funds in Harris' trust accounts. See Local Rule LSR 1-2. Therefore, the January 6, 2021, application to proceed *in forma pauperis* will be denied, and the Court will set a schedule for Harris to pay the filing fee or file a new, complete *in forma pauperis* application.

It is therefore ordered that Petitioner's application to proceed *in forma pauperis* (ECF No. 7) is denied.

1 It is further ordered that the following schedule will govern further proceedings in
2 this case.

3 Petitioner will have 60 days from the date of this Order to pay the \$5 filing fee for
4 this action, or to file a new, complete application to proceed *in forma pauperis*.

5 Petitioner will have 120 days from the date of this Order to file an amended petition
6 for writ of habeas corpus. The amended petition must specifically state whether each
7 ground for relief has been exhausted in state court; for each claim that has been
8 exhausted in state court, the amended petition must state how, when, and where that
9 occurred.

10 Respondents will have 60 days following filing of the amended petition to file an
11 answer or other response to the amended petition.

12 Petitioner will have 45 days following filing of an answer to file a reply.
13 Respondents will thereafter have 30 days following filing of a reply to file a response to
14 the reply.

15 If Respondents file a motion to dismiss, Petitioner will have 60 days following filing
16 of the motion to file a response to the motion. Respondents will thereafter have 30 days
17 following filing of the response to file a reply.

18 If Petitioner wishes to move for leave to conduct discovery, Petitioner must file
19 such motion concurrently with, but separate from, the response to Respondents' motion
20 to dismiss or the reply to Respondents' answer. Any motion for leave to conduct discovery
21 filed by Petitioner before that time may be considered premature, and may be denied,
22 without prejudice, on that basis. Respondents must file a response to any such motion
23 concurrently with, but separate from, their reply in support of their motion to dismiss or
24 their response to Petitioner's reply. Thereafter, Petitioner will have 20 days to file a reply
25 in support of the motion for leave to conduct discovery.

26 If Petitioner wishes to request an evidentiary hearing, Petitioner must file a motion
27 for an evidentiary hearing concurrently with, but separate from, the response to
28 Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for an

1 evidentiary hearing filed by Petitioner before that time may be considered premature, and
2 may be denied, without prejudice, on that basis. The motion for an evidentiary hearing
3 must specifically address why an evidentiary hearing is required and must meet the
4 requirements of 28 U.S.C. § 2254(e). The motion must state whether an evidentiary
5 hearing was held in state court, and, if so, state where the transcript is located in the
6 record. If Petitioner files a motion for an evidentiary hearing, Respondents must file a
7 response to that motion concurrently with, but separate from, their reply in support of their
8 motion to dismiss or their response to Petitioner's reply. Thereafter, Petitioner will have
9 20 days to file a reply in support of the motion for an evidentiary hearing.

10 DATED THIS 14th Day of January 2021.

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14 MIRANDA M. DU
15 CHIEF UNITED STATES DISTRICT JUDGE
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